

***REMARKS***

This is a full and timely response to the outstanding non-final Office Action mailed August 30, 2004. Reconsideration and allowance of the application and presently pending claims 1-25 and 27-57 are respectfully requested.

A. Present Status of Patent Application

Upon entry of the amendments in this response, claims 1-25 and 27-57 remain pending in the present application. More specifically, claims 44 and 54 are directly amended. These amendments are specifically described hereinafter. It is believed that the foregoing amendments and additions add no new matter to the present application.

B. Response to Rejection of Claims 1-57 Under 35 U.S.C. §102(e)

In the Office Action, claims 1-57 stand rejected under 35 U.S.C. §102(e) as allegedly being unpatentable by *Peppel* (U.S. Patent 6,200,216). For a proper rejection of a claim under 35 U.S.C. Section 102, the cited reference must disclose all elements/features/steps of the claim. See, e.g., *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 USPQ2d 1129 (Fed. Cir. 1988).

1. Claim 1

Applicant respectfully submits that independent claim 1 is allowable for at least the reason that *Peppel* does not disclose, teach, or suggest the feature of “wherein the gaming console and the remote gaming console communicate via the wide area network such that the remote gaming console synchronizes and copies the way in which a user of the *gaming console controls viewing of the digitised photographic image data such that a second user views the digitised photographic image data on the remote display*” (emphasis added), as recited in claim 1. That is, the user of a first console controls viewing by the second user on the remote display.

a. Allegation of the Office Action

In the Office Action at page 5, it is alleged that *Peppel* “discloses a method for viewing pre-captured photographic images with video gaming consoles, comprising: displaying at least one pre-captured photographic image on a local display using a local video gaming console in accordance with instructions from a user of the local video gaming console, and displaying the

pre-captured photographic image on a remote display using a remote local video gaming console in accordance with instructions from the user of the local video gaming console" at *Peppel*, in FIGs. 1-12, col. 3:33-67, col. 4:45-67, col. 5:1-67, col. 7:1-60, col. 8:1-67, col. 9:15-35, col. 10:1-67, col. 11:1-67 and col. 12:22-67.

Then, the Office Action, at pages 5-6, further alleges that *Peppel* "discloses displaying a second pre-captured photographic image on the local display using the local video gaming console in accordance with navigating instructions from the user of the local video gaming console, and displaying the second pre-captured photographic image on the remote display using the remote local video gaming console in accordance with the navigating instructions from the user of the local video gaming console" at *Peppel*, in FIGs. 1-12, col. 3:33-67, col. 4:45-67, col. 5:1-67, col. 7:1-60, col. 8:1-67, col. 9:15-35, col. 10:1-67, col. 11:1-67 and col. 12:22-67.

Similarly, the Office Action alleges that "Peppel, in FIGS. 1-12, col. 3:33-67, col. 4:45-67, col. 5:1-67, col. 7:1-60, col. 8:1-67, col. 9:15-35, col. 10:1-67, col. 11:1-67 and col. 12:22-67, discloses navigating between the pre-captured photographic image and the second pre-captured photographic image in accordance with the navigating instructions from the user of the local video gaming console and displaying the navigated to pre-captured photographic image on the remote display in accordance with the navigating instructions. *Peppel*, in FIGs. 1-12, col. 3:33-67, col. 4:45-67, col. 5:1-67, col. 7:1-60, col. 8:1-67, col. 9:15-35, col. 10:1-67, col. 11:1-67 and col. 12:22-67, discloses displaying a plurality of thumbnail images on the local display using the local video gaming console in accordance with the instructions from the user of the local video gaming console, the plurality of thumbnail images corresponding to a plurality of pre-captured photographic images, and displaying the plurality of thumbnail images on the remote display using the remote local video gaming console in accordance with the instructions from the user of the local video gaming console. *Peppel*, in FIGs. 1-12, col. 3:33-67, col. 4:45-67, col. 5:1-67, col. 7:1-60, col. 8:1-67, col. 9:15-35, col. 10:1-67, col. 11:1-67 and col. 12:22-67, discloses receiving a selection instruction from the user of the local video gaming console selecting one the plurality of thumbnail images on the local display; displaying a corresponding pre-captured photographic image; and displaying the corresponding pre-captured photographic image on the remote display in accordance with the selection instruction."

In the above sections of the Office Action which characterize *Peppel* (FIGs. 1-12, col. 3:33-67, col. 4:45-67, col. 5:1-67, col. 7:1-60, col. 8:1-67, col. 9:15-35, col. 10:1-67, col. 11:1-67 and col. 12:22-67), it is apparent that somewhere there is an allegation that *Peppel*

discloses at least the above-recited feature of “a user of the gaming console controls viewing of the digitised photographic image data such that a second user views the digitised photographic image data on the remote display” as recited in claim 1, although this claim element is not specifically rejected *per se* in the Office Action. Applicants cannot ascertain where, based upon the Office Action rejection, precisely where in *Peppel* the above-recited feature of claim 1 is allegedly disclosed. Accordingly, Applicants present below arguments that *Peppel* does not disclose, teach, or suggest at least the above recited feature of claim 1.

b. *Peppel* Figures 1-12

With respect to FIGs. 1, 3-5 and 7-12, there is nothing whatsoever in the *Peppel* FIGs. 1, 3-5 and 7-12 that pertain in any manner whatsoever to two users, as recited in claim 1.

FIG. 2 does illustrate a User 30 and a User 31. However, there is nothing in FIG. 2 that explicitly discloses, teaches, or suggests the feature of “a user of the gaming console controls viewing of the digitised photographic image data such that a second user views the digitised photographic image data on the remote display” as recited in claim 1. The discussion pertaining to FIG. 2 in the *Peppel* disclosure must be considered to determine what is precisely disclosed with respect to the User 30 and the User 31.

FIG. 6 illustrates “other users 234” under the “ETC User Activities” region. However, there is absolutely nothing in FIG. 6 that discloses, teaches, or suggests the feature of “a user of the gaming console controls viewing of the digitised photographic image data such that a second user views the digitised photographic image data on the remote display” as recited in claim 1. The discussion pertaining to FIG. 6 in the *Peppel* disclosure must also be considered to determine what is precisely disclosed with respect to the users 234.

c. *Disclosure in Peppel* Relating to FIG. 2

The portion of *Peppel* pertaining to FIG. 2 is found at Col. 5, lines 51-57, repeated below for the convenience of the Examiner. (The Office Action also recites to this section.)

FIG. 2 is a block diagram of a user trading card trading environment according to the invention. In the figure, a user 30, 31 has access to trading cards in various formats, including purchased cards 32, created cards 33, promotional cards 34, and game cards 35. The cards are stored and accessed in various media, including on-line media 36, physical media 37, and paper media 38.

In the section above, there is absolutely nothing in the discussion of *Peppel* FIG. 2 that discloses, teaches, or suggests the feature of "a user of the gaming console controls viewing of the digitised photographic image data such that a second user views the digitised photographic image data on the remote display" as recited in claim 1. That is, even though the users 30 and 31 apparently have access to the same media, the user 30 simply does not control viewing by user 31 (or vice versa).

d. Disclosure in *Peppel* Relating to FIG. 6

The portion of *Peppel* pertaining to FIG. 6 is found at Col. 6, line 53 through Col. 7, line 2, repeated below for the convenience of the Examiner. (The Office Action also recites to this section.)

FIG. 6 is a flow diagram of an electronic trading card architecture according to the invention. In the figure, an ETC is originated by manufacture (200) or by user creation (210). The ETC is distributed through such channels as on-line posting (220), retail sales (222), promotional collateral (224), and bundled with other products (226). The ETC is then used for various activities (as discussed briefly above and in greater detail below), including assembly into games and activities (230), linkage into digital albums (232), trading with others (234), linkage into digital movies (236), and making or editing of ETCs (238).

Electronic Trading Cards On-Line. On-line capability is a very important aspect of the ETC invention. When combined with unique software programs that are part of this invention, on-line systems support browsing, trading, buying and selling, auctioning, group and individual collecting, and group and individual creation of ETCs.

In the section above, there is absolutely nothing in the discussion of *Peppel* FIG. 6 that discloses, teaches, or suggests the feature of "a user of the gaming console controls viewing of the digitised photographic image data such that a second user views the digitised photographic image data on the remote display" as recited in claim 1. That is, even though the above section and FIG. 6 might be construed to imply that user 30 has access to the "other users 234" illustrated in FIG. 6, the user 30 simply does not control viewing by the other users 234 (or vice versa).

e. Other Disclosure in *Peppel*

*Peppel* apparently discloses interaction between multiple users in various places. However, at issue, is whether *Peppel* anywhere discloses, teaches, or suggests the feature of "a user of the gaming console controls viewing of the digitised photographic image data such

that a second user views the digitised photographic image data on the remote display" as recited in claim 1.

At Col. 7, lines 4-27 (also cited in the Office Action), *Peppel* discloses access whereby a "user connects his computer to a remote computer or server (11) that contains ETC files and utilities" (Col. 7, lines 4-7). Then, there is a passing reference that this remote user may participate in "group and individual collecting" (Col. 7, lines 17). Accordingly, there is no disclosure in *Peppel* Col. 7, lines 4-27 of "a user of the gaming console controls viewing of the digitised photographic image data such that a second user views the digitised photographic image data on the remote display" as recited in claim 1.

*Peppel* apparently discloses further interaction between multiple users at Col. 7, lines 41-57, repeated below for the convenience of the Examiner. (The Office Action also recites to this section.)

Browsing an ETC trading center. Listings of ETCs which are either resident on the server or have been listed there as available by other users or card manufacturers can be browsed and mail can be exchanged between potential buyers and sellers of cards. On-line card trading centers might be of any scale, from two users trading back and forth, to thousands of trades in progress simultaneously, creating an exciting, highly charged atmosphere.

Group and Individual Collecting of ETCs on-line. ETCs are offered for free, for promotional purposes, for sale or for trade on computer servers worldwide. Collectors with access to those servers through commercial services, such as CompuServe or America On-line, and non-commercial services, as the Internet, can search to find ETC files they are interested in collecting and then trade for or purchase those ETC files (see below). Ad hoc teams can be formed to collect ETCs competitively against other teams.

In the sections above, there is absolutely nothing which discloses, teaches, or suggests the feature of "a user of the gaming console controls viewing of the digitised photographic image data such that a second user views the digitised photographic image data on the remote display" as recited in claim 1.

Buying, selling and trading, presumably among multiple users, is also discussed in *Peppel* at Col. 8, lines 38-57, repeated below for the convenience of the Examiner. (The Office Action also recites to this section.)

Buying and Selling of ETCs on-line. Buying and selling is very similar to Trading (below) except that instead of exchanging ETCs for other ETCs, currency is exchanged for ETCs:

users can negotiate via electronic mail or other means;

users can post offers to buy and sell at specific locations. Offers are then stored and forwarded to owners of cards when they log onto the system (silent bidding);

and

cards can be offered for sale at live, real time auctions with bids submitted by simultaneously connected users.

Trading of ETCs on-line. Trading can be accomplished through communication between users of an on-line system in a number of ways: users can negotiate via electronic mail or other means; users can post offers for trades at specific locations. Offers are then stored and forwarded to owners of cards when they log onto the system (silent bidding); and cards can be offered for trade at live, real time auctions with bids submitted by simultaneously connected users.

In the sections above, there is absolutely nothing which discloses, teaches, or suggests the feature of “a user of the gaming console controls viewing of the digitised photographic image data such that a second user views the digitised photographic image data on the remote display” as recited in claim 1.

Organizing, sequencing and customizing materials, presumably among multiple users, is also discussed in *Peppel* at Col. 10, lines 36-45, repeated below for the convenience of the Examiner. (The Office Action also recites to this section.)

By interacting with a graphical user interface, commercial creators of ETCs as well as end-users can organize, sequence, and customize content materials from the digital content libraries. The ETC-making engine then compiles the associated files into an ETC which conforms to the proprietary ETC file format. The resulting ETC is then saved and/or copied to writable storage media, and/or transmitted through computer or telecommunications networks to facilitate ETC collecting, trading, or gaming activities, which are described below.

In the section above, there is absolutely nothing which discloses, teaches, or suggests the feature of “a user of the gaming console controls viewing of the digitised photographic image data such that a second user views the digitised photographic image data on the remote display” as recited in claim 1.

Throughout *Peppel* there are other limited discussions of various aspects of performing operations on the ETCs. The Applicant has closely reviewed all teachings in *Peppel*, and simply cannot find anywhere in *Peppel* anything that discloses, teaches, or suggests the feature of “a user of the gaming console controls viewing of the digitised photographic image data such that a second user views the digitised photographic image data on the remote display” as recited in claim 1. Accordingly, *Peppel* does not anticipate claim 1 and the rejection should be withdrawn.

f. Claims 2-18 and 27-28

Because independent claim 1 is believed to be allowable over the prior art of record, dependent claims 2-18 and 27-28 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that dependent claims 2-18 and 27-28 contain all features/elements/steps of independent claim 1: *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, the Applicant respectfully submits that claims 2-18 and 27-28 are allowable for at least the reason described above.

2. Independent Claims 19-26 and 29-57

In the Office Action, claims 19-57 are apparently rejected under the same basis as the rejection of claims 1-18 and 27-28. For brevity, the basis of the rejections provided in the Office Action are not repeated hereinbelow.

a. Claims 19 and 20

Applicant respectfully submits that independent claim 19 is allowable for at least the reason that *Peppel* does not disclose, teach, or suggest a feature “wherein the gaming console and the remote gaming console communicate via the wide area network such that the remote gaming console synchronizes and copies the way in which a *user of the gaming console controls viewing of the digitised photographic image data such that a second user views corresponding digitised photographic image data on the remote display*” (emphasis added), as recited in claim 19.

The Examiner is respectfully referred above to the arguments for allowability of claim 1 which demonstrate that the above-recited features of independent claim 19 are not disclosed, taught or suggested anywhere in *Peppel*. Accordingly, *Peppel* does not anticipate claim 19 and the rejection should be withdrawn.

Because independent claim 19 is believed to be allowable over the prior art of record, dependent claim 20 (which depends from independent claim 19) is allowable as a matter of law for at least the reason that dependent claim 20 contains all features/elements/steps of independent claim 19. Accordingly, the Applicant respectfully submits that claims 19 and 20 are allowable for at least the reason described above.

b. Claims 21-25

Applicant respectfully submits that independent claim 21 is allowable for at least the reason that *Peppel* does not disclose, teach, or suggest the feature of “the further viewing application program being arranged to configure the further gaming console to display the first user's digitised photographic image data on the further domestic visual display unit when the first user's digitised photographic image data has been received by the further gaming console” as recited in claim 21.

The Examiner is respectfully referred above to the arguments for allowability of claim 1 which demonstrate that the above-recited features of independent claim 21 are not disclosed, taught or suggested anywhere in *Peppel*. Accordingly, *Peppel* does not anticipate claim 21 and the rejection should be withdrawn.

Because independent claim 21 is believed to be allowable over the prior art of record, dependent claims 22-25 (which depend from independent claim 21) are allowable as a matter of law for at least the reason that dependent claims 22-25 contain all features/elements/steps of independent claim 21. Accordingly, the Applicant respectfully submits that claims 22-25 are allowable for at least the reason described above.

c. Claims 29-42

Applicant respectfully submits that independent claim 29 is allowable for at least the reason that *Peppel* does not disclose, teach, or suggest the feature of “displaying the pre-captured photographic image on a remote display using a remote local video gaming console in accordance with instructions from the user of the local video gaming console” as recited in claim 29.

The Examiner is respectfully referred above to the arguments for allowability of claim 1 which demonstrate that the above-recited features of independent claim 29 are not disclosed, taught or suggested anywhere in *Peppel*. Accordingly, *Peppel* does not anticipate claim 29 and the rejection should be withdrawn.

Because independent claim 29 is believed to be allowable over the prior art of record, dependent claims 30-42 (which depend from independent claim 29) are allowable as a matter of law for at least the reason that dependent claims 22-42 contain all features/elements/steps of independent claim 29. Accordingly, the Applicant respectfully submits that claims 30-42 are allowable for at least the reason described above.

d. Claims 43-52

Applicant respectfully submits that independent claim 43 is allowable for at least the reason that *Peppel* does not disclose, teach, or suggest the feature of “displaying at least one pre-captured photographic image on a local display using a local video gaming console in accordance with instructions from a user of the local video gaming console; and communicating the pre-captured photographic image to a remote local video gaming console such that the pre-captured photographic image is displayed on a remote display in accordance with the instructions from the user of the local video gaming console” as recited in claim 43.

The Examiner is respectfully referred above to the arguments for allowability of claim 1 which demonstrate that the above-recited features of independent claim 43 are not disclosed, taught or suggested anywhere in *Peppel*. Accordingly, *Peppel* does not anticipate claim 43 and the rejection should be withdrawn.

Because independent claim 43 is believed to be allowable over the prior art of record, dependent claims 44-52 (which depend from independent claim 43) are allowable as a matter of law for at least the reason that dependent claims 44-42 contain all features/elements/steps of independent claim 43. Accordingly, the Applicant respectfully submits that claims 44-52 are allowable for at least the reason described above.

e. Claims 53-57

Applicant respectfully submits that independent claim 53 is allowable for at least the reason that *Peppel* does not disclose, teach, or suggest the feature of “displaying the pre-captured photographic image on a remote display using a remote local video gaming console in accordance with instructions from the user of the local video gaming console” as recited in claim 53.

The Examiner is respectfully referred above to the arguments for allowability of claim 1 which demonstrate that the above-recited features of independent claim 53 are not disclosed, taught or suggested anywhere in *Peppel*. Accordingly, *Peppel* does not anticipate claim 53 and the rejection should be withdrawn.

Because independent claim 53 is believed to be allowable over the prior art of record, dependent claims 54-57 (which depend from independent claim 53) are allowable as a matter of law for at least the reason that dependent claims 54-57 contain all features/elements/steps of independent claim 53. Accordingly, the Applicant respectfully submits that claims 54-57 are allowable for at least the reason described above.

3. Claim 26

In the Applicant's response to the Office Action mailed March 11, 2004, Applicant canceled claim 26. However, in the Office Action Summary sheet, the Office Action indicates that claim 26 remains pending. Also, claim 26 stands rejected under *Peppel*. Because claim 26 has been canceled, the rejection to claim 26 is moot.

C. Amendment of Claims 44 and 54

Claim 44 is amended herein to correctly depend upon independent claim 43, as originally intended by the Applicant. Similarly, claim 54 is amended herein to correctly depend upon independent claim 53. Applicant is merely correcting obvious typographical errors. Furthermore, Applicant believes that the Office Action examined these claims as presently amended since the Office Action neither objected or rejected these claims because of improper dependency. Accordingly, the amendments to claims 44 and 54 do not narrow the scope of these claims as originally filed or as examined. Therefore, no prosecution history estoppel should arise from the amendments to these claims.

D. Request for Specificity of Rejections in the Next Office Action for Claims that may Continue to be Rejected

MPEP section 706.02(j) indicates that "it is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply. ... It is important that the written record clearly explaining the rational for decisions made during prosecution of the application."

In the present Office Action, the claims are themselves not individually rejected. Therefore, it was extremely difficult for the Applicant to determine precisely which features of any particular claim were being rejected. That is, it would be very helpful for the Applicant to understand precisely which claims are being rejected under the recited sections of *Peppel*. Furthermore, the Office Action based its rejections globally on *Peppel*, by reciting to FIGs. 1-12, col. 3:33-67, col. 4:45-67, col. 5:1-67, col. 7:1-60, col. 8:1-67, col. 9:15-35, col. 10:1-67, col. 11:1-67 and col. 12:22-67.

Applicant notes that over half of the *Peppel* disclosure, and all of the FIGs., were alleged to have some relevance to the rejected claims.

Applicant believes, after detailed review, that many of the recited FIGs. and sections of *Peppel* did not pertain in any manner whatsoever to aspects of the embodiments as defined by claims 1-25 and 27-57. Accordingly, it was very difficult for the Applicant to determine the basis of rejection, and in fact, in many instances, the Applicant was required to speculate how the recited portions of *Peppel* might somehow relate to recited features of a claim.

Applicant would greatly appreciate that, in the event any claims remain rejected in the next Office Action, that the Office Action point out with particularity precisely where *Peppel* suggests, discloses or teaches a recited claim feature, as prescribed under MPEP section 706.02(j).

***CONCLUSION***

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-25 and 27-57 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,



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